IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.346 OF 1997

Dattatraya Dadu Korane, Indian Inhabitant, aged 45 years, Occu: Nil, R/o. Nandyain Taluka Kagal, District Kolhapur. ..Appellant.

V/s.

The State of Maharashtra through Murud Police Station, District Kolhapur. ..Respondent.

Mr.S.V.Marwadi for the appellant.

Mr.A.M.Shringarpure, A.P.P. for State.

CORAM : V.G. PALSHIKAR AND V.C. DAGA, JJ.

DATED : 14TH JUNE, 2005.

JUDGMENT (PER V.C. DAGA, J.)

1. This appeal is at the instance of the accused Dattatraya Dadu Korane (appellant), who is convicted of the offences punishable under section 302 of the I.P.C. and sentenced to suffer imprisonment for life with fine of Rs.1,000/- i/d. to suffer further R.I. for 6 months. The appellant-accused was further found guilty of the offence punishable under section 201 of I.P.C. and sentenced to suffer R.I. for 3 years with fine of Rs.500/- i/d. to suffer further R.I. for 3 months.

The Facts

2. The prosecution story is that the deceased Sharubai Dadu Korane, mother of accused, used to reside separately but in the front portion of the house with her only son i.e. appellant-accused Dattatraya. Appellant-accused used to reside in the rear portion of the said house along with his second wife and children.

3. The prosecution story further goes to say that deceased Sharubai was owning of some irrigated land; whereas some non-irrigated land is owned by her son; appellant -accused. Every year for Aashad Yatra, deceased-Sharubai used to visit Pandharpur. In order to meet her expenses, she used to sell household utensils and other articles and some times she used to borrow money from others to attend pilgrimage at Pandharpur. Appellant-accused was required to repay the borrowings made by his mother - deceased Sharubai. It was also said to be the grievance of the appellant-accused that his mother deceased Sharubai could not adjust with any of her daughter-in-laws as such there used to be frequent quarrel between the accused-son and the deceased mother. In nutshell, relations between them were not cordial.

4. It is alleged that on the day of the incident i.e. prior to Aashadi Yatra of year 1994, some where in the month of May, 1994 the appellant-accused returned back home from outside. At that time, he found his mother lying on bed. He noticed that his wife Shalan and children were sleeping in the rear portion of the house. When appellant-accused entered the house, his mother noticing the entry of his son, started quarrelling with him. It is alleged that during this hot exchange of words, the appellant-accused took out a stick and gave 3-4 blows on her head due to which she instantly died on the spot. Thereafter, appellant-accused finding his wife and children sleeping, lifted the dead body of his deceased mother and carried it to the river bed of river Chikotra and buried the same in a ditch dug for the purpose and then returned to his house.

5. The prosecution case further goes to say that when his wife Shalan, on the next day morning enquired with the appellant-accused about his mother, he told her that she had left for Pandharpur yatra. Accordingly, he also gave the same reply to the villagers, when inquired by them.

6. The prosecution story further goes to say that the daughter of deceased Sharubai i.e. P.W.4 Kerubai came to village Nandhyal from Ichalkaranji and enquired with the

appellant-accused about her mother. Appellant-accused informed her that she had gone to Pandharpur. Lateron, she enquired from some other villagers, who had returned from Pandharpur; as to whether they saw her mother at Pandharpur. She was informed that her mother did not attend the yatra at Pandharpur with them in that year. Smt.Kerubai insisted upon his brother appellant-accused to accompany her to Pandharpur to find out whereabouts of her mother - Sharubai. Accordingly, appellant-accused accompanied Kerubai to Pandharpur to avoid any doubt against him. At Pandharpur, their mother was not found. Thereafter, sister Kerubai directed him to lodge a missing report to the police. Appellant-accused, due to fear of police, did not go to the police station to lodge complaint. After sometime, Kerubai again came to village Nandyal. She found idols of God Vitthal-Rukhamani and Lord Krishna, pataka (small flags), etc. with bag of her mother lying in the house itself. All these articles usually used to be carried by the deceased - Sharubai whenever she used to attend the fair at Pandharpur. Sister Kerubai noticing all these articles in the house itself, suspected some foul play on the part of the appellant-accused.

7. Lateron, appellant-accused filed missing report with the police station on 5/8/1996 vide Exhibit-18. It

was registered at serial No.5/95. It was enquired into by P.H.C. Shri Kamble and P.S.I. Shri Mane.

8. The prosecution story further goes to say that during this period the appellant-accused repented for the unlawful act committed by him. He became uneasy. On realisation of having committed wrong, he went to his maternal uncle one Shri Joti, along with (P.W.3) Rajaram. He confessed his guilt before him and requested him to save him from the sin committed by him. He also offered two acres of land to his sister Kerubai. He also admitted guilt before her.

9. The prosecution claimed that the appellant - accused during the course of investigation confessed before P.S.I. Mr.Mane about his guilt which resulted in lodging F.I.R. on 12/5/1996, upon which Crime No.21/96 came to be registered under section 302 & 201 of the I.P.C.

10. The statements of the witnesses were recorded by the police. Accused informed police that he had hidden the stick and spade. He agreed to produce the same. He also agreed to show the place where the corpse of Sharubai was buried. Accordingly, memorandum panchanama Exhibit-10 was scribed in presence of panchas. At the instance of

appellant-accused, spade and stick were seized under section 27 of the Indian Evidence Act. The police reached the spot alleged to have been shown by the appellant - accused where the dead body alleged to have been buried. The spot was dug with the help of a tractor but no dead body of Sharubai could be found by the police at the said spot said to be river bed of river Chikotra.

11. The appellant-accused during the course of investigation was produced before the Special Judicial Magistrate on 19/8/1996 to record his confession under section 164 of Cr.P.C. The Magistrate Shri S.A. Panditrao (P.W.9) put certain questions to the appellant-accused to get himself satisfied that the appellant-accused was giving his statement voluntarily. However, he also granted him 24 hours time to rethink as to whether or not he should confess his guilt. Accordingly, he was called on the next day i.e. 20/8/1996. His confessional statement was recorded by the said Magistrate Shri S.A.Panditrao before whom he is said to have admitted his guilt.

AT TRIAL

12. The prosecution in support of the prosecution case has examined Manohar Pandurang Patil (P.W.1), Joti Bhau

Rangpure (P.W.2), Rajaram Govind Aswale (P.W.3), Kerubai Bhagwan Khot, sister of the appellant-accused (P.W.4), Krishna Piraji Patil, P.H.C. (P.W.5) who has recorded the missing complaint on 5/8/1995 given by the appellant-accused. Dilip Sambhaji Kamble, P.H.C. (P.W.6); who had heard the accused giving confession, was also examined along with S.S.Salokhe (P.W.7) and R.D.Mane (P.W.8). Shri S.S.Panditrao (P.W.9), the Special Judicial Magistrate was also examined to prove the confessional statement given by the appellant-accused. The trial Court after recording the evidence, recorded the finding of guilt against the accused and convicted him for offence punishable under sections 302 & 201 of the I.P.C., as stated in the opening para of this Judgment.

CONSIDERATION

13. Heard learned counsel for the appellant and the learned A.P.P. representing the State.

14. Having heard the rival parties,it is not in dispute that the F.I.R. was lodged almost after expiry of one year and thereafter, investigation commenced. But during the course of the investigation, the dead body of the deceased could not be recovered. The spot at which the dead body was allegedly buried by the appellant-accused

also did not reveal any signs of burial of a body. The very factum of death of deceased Sharubai has not been established.

15. The prosecution story, as sought to be revealed is that the appellant-accused committed the murder of his mother in the same house; wherein his mother, his second wife and 4 children were residing. It is beyond comprehension that in spite of giving 3/4 stick blows on the head of his mother, she would not raise any alarm and that none of the inmates in the house would notice this act of the appellant-accused. It is also unpalatable that the appellant-accused would lift her dead body and carry it to the river bed of river Chikotra and that this act would not be noticed by anybody in the village. It is also beyond comprehension that his wife would believe the version of the appellant-accused given on enquiry that his mother left for Pandharpur yatra. It has come on record that all her belongings such as bag, patakas (small flags) with other articles; which normally a person going to pilgrimage carry; were lying in the same house and none of those articles would be noticed by his wife so as to put him further cross questions. It is also beyond comprehension that after one year, the appellant-accused himself will disclose about his act of committing murder.

16. Apart from above, the trial Court has also relied upon the confessional statement given by the appellant-accused to prove the offence alleged against him. The law with respect to the reliance on the confessional statement is well settled. Readily available Judgment of the Apex Court is in the case of **Devindra Prasad Tiwari V/s. State of Uttar Pradesh** reported in **A.I.R. 1978 Supreme Court, 1544** which clearly lays down that a confessional statement made under section 164 of Cr.P.C. can be acted upon provided it is shown to be voluntarily and free from police influence. The confessional statement made by the appellant-accused cannot be relied upon if it suffers from serious infirmities in case the Judicial Magistrate recording confessional statement does not question him as to why he is making the confession and that it is not obligatory on his part to confess crime, if any. It is also required to be told by him to the accused that he would not be remanded to police lock up even if he did not confess his guilt. None of these formalities have been observed on 20th August, 1996, when confession of the appellant-accused was recorded. Confessional statement suffers from legal infirmities. He did not take the signature of the appellant-accused on confessional statement. In our considered view, it could not have been relied upon by the trial Court. Similarly, the Court

below could not have relied upon the evidence of Dilip Kamble, police constable to prove guilt based on the confession given to him by the appellant-accused. The confession is not supported by any independent evidence on record. There are other number circumstances sufficient to raise a doubt with respect to the veracity of the prosecution story. No motive behind the alleged offence has been proved by the prosecution. Under these circumstances, the prosecution has miserably failed to prove the offence against the appellant-accused.

17. In the result, the appeal is allowed. The conviction of the appellant-accused for the offences punishable under section 302 & 201 of the I.P.C. is quashed and set aside and the accused is acquitted.

18. His bail bond shall stand cancelled. The amount of fine, if deposited, be refunded.

(V.G.PALSHIKAR, J.)

(V.C.DAGA, J.)